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ABSTRACT

The aim of the "English-Only" movement is to make English the official national language. The Constitution of the United States does not mention the English language, and therefore the country has no official language. The legacy of the nation's founders is one of linguistic tolerance. The increase in immigrants from Asia and Latin America has generated a nativist backlash. Within the "English-Only" movement, U.S. English (USE) is more sophisticated and successful than groups like "English First" that are overtly much more nativist and virulently anti-immigrant. Eighteen states and numerous cities and towns have official English laws. These laws can be attacked on First, Fifth, Sixth, and Fourteenth Amendment grounds. The "English-Only" movement's rhetorical focus on the laudable goals of national unity and English proficiency has brought considerable financial and political success. Yet the movement is driven by cultural insecurity and prejudice against minorities. English-only laws fail to advance English proficiency or foster national unity. Instead, they promote harmful divisiveness while infringing on important minority rights. (CK)

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The Fund for Free Expression

A COMMITTEE OF HUMAN RIGHTS WATCH

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"ENGLISH-ONLY"

The Attack on Minority Language Speakers in the United States

U.S. DEPARTMENT OF EDUCATION
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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

"If English was good enough for Jesus Christ, it's good enough for me."

-- Attributed to H.L. Mencken

INTRODUCTION

Because 96% of Americans speak English well, and since two out of three Americans believe English is already the official language of the United States, why not declare English the "official" national language? That is the aim of a movement that has gathered support around the United States in the last several years, obtaining the passage of official English laws in eighteen states and numerous cities and towns, and ultimately seeking federal legislation.

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However benign it may seem, the declaration of an "official language" would be used as a tool for prejudice. The leaders of the "English-Only" movement focus their public arguments on the goal of national unity and helping immigrants learn English, but it appears that the real agenda of the movement is to attack and suppress the limited rights of minority language speakers. The xenophobia and fear and resentment of Asian and Hispanic immigrants reflected in the English-Only movement is deeply rooted in American history.

HISTORICAL OVERVIEW

Unlike many nations, the United States has no "official" language. The Constitution of the United States and the Declaration of Independence do not mention the English language. No special preferences are given English speakers by those two documents. The legacy of the founders of the nation is one of linguistic tolerance. For example, the Articles of Confederation were translated into German. Many French and German speakers lived in the original thirteen colonies.

As the United States expanded westward, territories in which French and Spanish speakers resided were annexed. The inhabitants of those territories were allowed to become naturalized American citizens without a requirement of English proficiency. The wave of immigration in the late 19th century ended linguistic tolerance. Vast numbers of immigrants from Southern and Eastern Europe and from Asia created a political and cultural backlash.[1] "Americanization" programs, originally designed to help immigrants learn English, quickly took on xenophobic traits by requiring English for employment, voting and education. In 1906, for the first time, aliens were required to speak English in order to become naturalized citizens.

The backlash against European "foreigners" rapidly, and with greater force, was redirected towards non-English speaking groups who were physically identifiable. Chinese, Japanese, and Spanish speakers quickly found that the U.S. was no longer linguistically tolerant.[2] Thus, censorship of minority languages, in the sense of attacking and suppressing these languages, has existed in the United States since about 1880. Generally, suppression of minority languages has been intertwined with discrimination against the group that speaks the language. If the non-English- speaking group did not conform to the white Anglo-Saxon norm in physical appearance, it was more likely that they would be subject to discrimination on the basis of language.[3]

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[1] A U. S. government commission in 1911 found that "old" immigrants (pre-1880 Germans and Scandinavians) were considered stable, industrious and easily assimilated. "New" immigrants (post-1880 Italians, Jews and others) were thought of as harder to assimilate, transient, less intelligent and too "urban." K. Hakuta, *Mirror of Language: The Debate on Bilingualism*, Basic Books (1986).

[2] For example, the Territory of Hawaii tried to ban *private* Japanese language schools. In its public schools Hawaii had a statewide system of segregation by language. Mari J. Matsuda, "Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction," 100 Yale L. J. 1329, 1344.

Segregation of Mexican-American children was pervasive in the Southwestern United States, from about 1880 to about 1954. Punishment for speaking minority languages in public schools still occurs.

[3] Thus, Spanish, Chinese, Japanese, Tagalog, other Asian languages and Native American languages have been the languages which have been traditionally attacked and suppressed. The notable exception to this rule were the Germans. As a result of World War I, these formerly "good" immigrants were castigated. Many states passed laws that prohibited the use of the German language in schools, even private religious schools. A teacher in Nebraska taught a Bible story in German, and was indicted and criminally convicted under an early "English -

NATIVISM TODAY -- THE ENGLISH-ONLY MOVEMENT

In 1965, longstanding immigration laws which heavily favored European immigrants over immigrants from Asia and Latin America were repealed. This change, coupled with political instability in parts of Asia and Latin America, caused many Asians and Hispanics to migrate to the United States.[4]

Predictably, the increase in immigrants from Asia and Latin America has generated a nativist backlash. Organizations at the forefront of advocacy for English-Only have their roots in advocating restrictionist immigration policies.[5]

The English-Only movement fears and resents minority language speakers. Of the various organizations in the movement, U. S. English (USE) is more sophisticated and more successful than groups like English First that are overtly much more nativist and virulently anti-immigrant. USE reaches beyond the predictable right-wing fringe by invoking powerful and universally accepted symbols of national unity to promote its agenda of discrimination and division. For example, USE always uses the flag, the Statue of Liberty, and a map of the United States in its promotional literature, and invokes the rhetoric of equal opportunity.[6]

Many people who support and contribute to USE appear to believe that it is dedicated to teaching English to immigrants.[7] As a matter of fact, USE spends only between 1% and 7% of its budget on

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Only" law. The Supreme Court overturned the state court decisions upholding the law on the grounds that it interfered with the teacher's constitutional right to liberty. *Meyer v. Nebraska*, 262 U. S. 390 (1922).

[4] Today approximately 22.4 million Americans are of Hispanic origin. Approximately 7.3 million Americans are of Asian descent. Asian-Americans are the fastest growing minority group in the United States. Naturally, this population change was reflected in language use in the United states. In 1940, German was still the second most used language in the United States. By 1975, Spanish was the second most common language in the United States and remains so.

[5] For example, English First, which claims a quarter of a million members, is part of a parent organization called the "Committee to Protect the Family," whose other subsidiaries include U. S. Border Control and Gun Owners of America. U. S. English (USE), with a membership of over 400,000 and an annual budget of $7 million, grew out of an organization (Federation for American Immigration Reform) that advocated severe restrictions on immigration. USE's Advisory Board includes Alistair Cooke, Barry Goldwater and Arnold Schwarzenegger.

[6] A particularly good example of USE's new line is an advertisement that appeared in the *Christian Science Monitor* on October 5, 1990. Four young adolescent males, (one white, one Asian, one black and one Hispanic) grin confidently at the reader. Superimposed is the text: "IN AMERICA, WE SHARE SOMETHING VALUABLE THAT MAKES FRIENDSHIP POSSIBLE. WE SHARE ENGLISH, OUR COUNTRY'S COMMON LANGUAGE... We, the undersigned, recognize the value of our common language and support efforts to enable all Americans to learn English - the language of equal opportunity." After the signatures appears the USE logo, a map of the continental United states with "U.S. English-THE LANGUAGE OF EQUAL OPPORTUNITY" superimposed.

[7] For a fascinating analysis of the symbols and ideology of USE see Heidi Tarver, "Language and Politics in the 1980's: The Story of U.S. English" in *Politics & Society* 17: 225-45 (June 1989).

actually *helping* people learn English.[8] The remaining 93-99% of its budget is spent trying to take away the limited rights language minorities have.

Occasionally, USE's velvet prose on national unity is cast aside. For instance, Dr. John Tanton, the founder of USE, wrote a paper to be used by USE leaders at a 1986 conference, expressing concern about Hispanics and the political and cultural threat he thinks they pose to majority dominance. Tanton stated his concern in the following way: "[P]erhaps this is the first instance in which those with their pants up are going to get caught by those with their pants down!"[9]

The publication of the contents of this paper were a setback for USE. Tanton resigned from the organization. The executive director, a former Republican senatorial candidate, Linda Chavez, denounced the paper and then resigned from her position. Walter Cronkite, a member of the advisory board, resigned.

STATE AND LOCAL LAWS AND THEIR EFFECTS

The work of USE continues unabated. Eighteen states and scores of cities and towns have official English laws.[10] Indeed, USE played the decisive role in campaigns to make English the official language in states. It organized and financed state English-Only drives. Both state and local laws have caused greater tension and divisiveness between language groups. Minorities that are intent on assimilation and participation in American society react defensively to English-Only laws that they perceive as an attack not only on their native language, but on them as well.

The human cost is demonstrated by the following examples, all of which occurred after passage of an English-Only law.

- The Mayor of Monterey Park, California refused to accept a gift from the government of Taiwan of 10,000 Chinese language books to the Public Library. Although the City has

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[8] Surveys show that 98% of Hispanics think that learning English is a civic duty. Long waiting periods for adult English classes attests to the desire of this group of immigrants, like previous immigrants, to learn English. Immigrants realize that there are enormous advantages to knowing English. Declaration of English as the official language is an unnecessary, and possibly harmful, way of encouraging English proficiency.

[9] Califa, "Declaring English the Official Language: Prejudice Spoken Here," 24 *Harvard Civil Rights-Civil Liberties Law Review* 293 (1989) at 326-329. Tanton further states that Hispanics and Blacks would never progress economically, that Hispanics were not as "educable" as Asians, and that Hispanic Catholicism would mean the end of the separation of church and state. Tanton said that Hispanic immigration would lead to American apartheid. His solution is to stop all immigration for twenty years.

[10] The eighteen states include Arizona whose law has been declared unconstitutional, and Hawaii, which is officially bilingual: both English and Hawaiian are official languages. The form of the state, local and federal English-Only laws varies. Some state statutes simply declare English the "official" language. Most state and local laws go much further. They bar or limit severely the government's provision of non-English language services and assistance. Thus, governmental services must be in English and only in English. See for example, H. J. Res. 96 sponsored by Rep. Norman Shumway (R-California), introduced in 1985. This federal proposal mirrored many state laws. The only exemption would have allowed use of a language other than English for the purpose of teaching English, i.e., it would have eliminated bilingual education.

thousands of Chinese speakers, the Mayor refused the gift because English is the only accepted language.

- A non-English-speaking prisoner in Arizona had a parole hearing scheduled. The Parole Board canceled his hearing, fearing that the English-Only law prohibits the translation necessary to make the proceedings understandable to him.

- The English-Only law in Dade County, Florida was construed to prohibit signs in the zoo which identify animals by their genus and species (in Latin).

- A restaurant worker in Denver, Colorado was asked by a patron from South America to translate an item on the menu. The worker complied, and was fired by the manager, who cited the recently enacted English-Only law.[11]

HOW MINORITY LANGUAGE "RIGHTS" WOULD BE AFFECTED BY ENGLISH-ONLY LAWS

No comprehensive right to use a language other than English in public life in the United States has been recognized. However, in a haphazard way, the U. S. government has acknowledged that languages other than English may be used in public life. The government's response has been sporadic, limited and reactive -- usually to a situation where prohibiting use of a language other than English would have impinged on other important rights, such as the right to a fair trial.[12] Passage of English-Only laws would destroy these rights.

In addition, certain other very limited language "rights" have been recognized. In 1975 Congress found that voters suffered discrimination on the basis of language, and that such discrimination was pervasive and national in scope.[13] Under the 1975 and 1982 Amendments to the Voting Rights Act,

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[11] The last example illustrates a growing problem caused by English-Only laws in the workplace, where there is increasing intolerance of minorities -- i.e., that no other language may be spoken in the workplace, even in conversations that occur on breaks or during lunch hours. Indeed, minority people have been demoted for using their native language when they call home and talk to their families.

Discrimination against workers who speak English with a "foreign" accent was documented by the General Accounting Office in a report, GAO/GGD-90-62 (March 1990), finding Hispanics three times as likely to encounter job discrimination as white non-Hispanics.

[12] For example, in *Ex. Rel. Negron v. New York*, the defendant was an uneducated, indigent Puerto Rican, a citizen of the United States. He was on trial for his life. He could not speak or understand English. His court-appointed lawyer could not speak or understand Spanish, nor could Negron understand the twelve witnesses who testified in English. Negron was sentenced to life in prison.

The Second Circuit Court of Appeals held that the Sixth and Fourteenth Amendments to the U. S. Constitution had been violated because the defendant could not consult with his attorney, could not cross examine the witnesses against him and was effectively not present at his own trial. The Court wrote:

> "Particularly inappropriate in this nation where many languages are spoken is a callousness to the crippling language handicap of a newcomer to its shores, whose life and freedom the state by its criminal processes chooses to put in jeopardy." *Ex. Rel. Negron v. New York*, 434 F. 2d 386, 390 (2d Cir.1970).

The Congress agreed with the Court's opinion and soon passed the Court Interpreters Act, now at 28 U. S. Code § 1827, which requires interpreters in federal criminal trials.

[13] Pub. L. No. 94-73, 1975 U. S. Code Cong & Admin News (89 Stat.) 401 (codified as amended at 42 U. S. C. § 1973b (f)(1)(1982)).

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language minority voters can receive oral assistance and voting materials in a language they understand, only if highly restrictive conditions are met.

Under Section 4 of the Act, a state or political subdivision is covered if:

(i) over 5 percent of the voting-age citizens were, on November 1, 1972, members of a single language minority group;

(ii) registration and election materials were provided in English on November 1, 1972; and

(iii) less than 50 percent of citizens of voting age were registered to vote or voted in the November 1972 Presidential election.

Section 203 of the Voting Rights Act requires language assistance for voters in those jurisdictions in which the Director of the Census determines that:

(i) more than 5 percent of the voting age citizens are [a] members of a single language minority and [b] do not speak or understand English adequately enough to participate in the electoral process; and

(ii) the illiteracy rate of this group is higher than the national rate.

Passage of English-Only laws would destroy this right, effectively disenfranchising a large number of Hispanic and Asian voters.[14]

In education, the government recognized that language minority students suffer grave discrimination when they are placed in English-Only classrooms because they do not understand the language of instruction. The government has allowed local schools to offer non-English-speaking children transitional bilingual education which uses their native language, while the children learn English. Passage of English-Only laws would severely curtail and perhaps destroy this right.

There is some protection for language minorities in the workplace. The Equal Employment Opportunities Commission adopted a guideline that stated that an employer may not prohibit use of a language other than English in the workplace unless doing so is a business *necessity*. Similarly, an employer can not refuse to hire or promote a language minority person, unless the employer can show that the performance of the job requires a proficiency in English that the worker does not have.

Because English-Only laws would repeal the EEOC's guideline, minority language workers would be very vulnerable to discrimination.

Other vital rights would be destroyed. Many localities provide multilingual emergency lines.

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[14] Research shows that 70% of monolingual Spanish- speaking citizens would be less likely to register to vote if bilingual assistance were eliminated. R. Brischetto, *Bilingual Elections at Work in the Southwest* 68, at 100, table 28 (1982).

Twenty-one agencies of the United States government provide information in languages other than English.[15] Many agencies provide grants to community service organizations which provide services in languages other than English. The Federal Communications Commission grants licenses to radio and television stations to broadcast in languages other than English. Passage of English-Only laws would jeopardize the granting of these licenses and grants, and the distribution of information.[16]

POSSIBLE LEGAL PROBLEMS WITH ENGLISH-ONLY LAWS

English-Only statutes could be attacked on several possible grounds.[17] First, an English-Only statute could violate a particular constitutional guarantee. For example, an English-Only statute that would prohibit the practice of giving *Miranda* warnings in Spanish may violate the Fifth Amendment, which guarantees the right to be represented by counsel.[18]

First Amendment

English-Only laws can be attacked on general First Amendment grounds. Laws violate the First Amendment guarantees of freedom of expression when they infringe directly upon an individual's right to freedom of speech, or when the laws impermissibly create a "chilling effect" which inhibits the exercise of the right to free speech.[19]

The First Amendment was used to hand USE its most significant legal defeat yet. In *Yniguez v. Mofford*,[20] a Federal District Court held that the Arizona English-Only law was unconstitutional, and therefore invalid, because it violated the First Amendment of the U. S. Constitution.

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[15] *The English Language Amendment: Hearing on S. J. Res. 167 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 98th Cong., 2d Sess. 20 (statement of Sen. Huddleston).

[16] Indeed, the newest version of a USE supported English-Only law the "Language of Government Act," would make discrimination against English speakers, solely on the grounds that they spoke English, the equivalent of race discrimination, and a violation of the employment discrimination laws. Thus, private employers who wanted to hire people with skills in languages other than English could not do so. This bill, S. 434, has been introduced by Sen. Richard Shelby (D-Alabama).

[17] These legal attacks are only available if the English-Only law is a statute. The ultimate goal of the English-Only movement is to pass a federal constitutional amendment, declaring English the official language, and prohibiting the government from using other languages. Such an amendment would override earlier inconsistent constitutional amendments, thereby rendering the legal arguments described above useless.

[18] And, as we have seen, a criminal trial conducted in a language which the defendant cannot understand violates the Sixth Amendment, which guarantees the right to a fair trial.

[19] The First Amendment protects not only the right to speak freely but also the right to *receive* information. The history of the English-Only movement is replete with significant First Amendment problems. U. S. English has tried to "purify" the air waves by petitioning the Federal Communications Commission to ban Spanish language radio in south Texas. Further, the English-Only movement has tried to stop Spanish language advertising of major corporations, and Chinese language signs in many towns.

[20] *Yniguez v. Mofford*, 730 F. Supp 309 (D. Ariz. 1990).

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The Court found that this provision violated the First Amendment rights of government officials and workers. Government officials and employees have the right under the First Amendment to communicate with voters and clients in languages other than English. The new law infringed on this right by prohibiting communication by government officials and employees in any language other than English.[21] According to the court:

> When read at its full literal breadth, Article XXVIII would force Arizona governmental officers and employees whose use of a non-English language in the performance of their official duties is protected by the First Amendment, such as state legislators speaking to constituents in a language other than English, state employees officially commenting on matters of public concern in a language other than English, and state judges performing marriage ceremonies in a language other than English to either violate their sworn oaths to obey the state constitution, and thereby subject themselves to potential sanctions and private suits, or to curtail their free speech rights.[22]

Equal Protection

The Equal Protection Clause of the Fourteenth Amendment forms the basis for another legal argument against English-Only laws. Under the Fourteenth Amendment, the government cannot deny persons the equal protection of the laws. While government distinguishes among persons for many purposes, the courts have long held that it must provide sufficient justification for doing so.

Most laws must merely be plausibly rational in order to satisfy the Equal Protection Clause. However, certain classifications trigger more demanding review from the courts. Classifications based upon certain characteristics historically the subject of invidious discrimination, including race, national origin and alienage, must meet the strictest test. Such "suspect classifications" must achieve a compelling governmental objective and there must not be any less restrictive classification that would accomplish the same purpose. Classifications restricting certain fundamental rights, including the right to vote, also trigger this strict form of scrutiny.

The courts may also apply an intermediate level of scrutiny to laws that do not quite constitute a suspect classification or which implicate important, but not fundamental, rights. To survive intermediate scrutiny, legislation must substantially further an important state interest. English-Only laws would almost certainly be declared unconstitutional if either intermediate scrutiny or strict scrutiny were applied.

The Requirement of Intent

To invoke either strict scrutiny or intermediate scrutiny, however, it is not enough that the legislation in question have the effect of discriminating against minorities; the law must be intentionally discriminatory. Legislation must be motivated "because of," and not "in spite of," its adverse consequences

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[21] USE is appealing this decision. English-Only laws introduced since *Yniguez* have dropped the provision that state officials conduct all government business in English only. Therefore, these laws are harder to challenge on First Amendment grounds than was the Arizona law.

[22] *Yniguez v. Mofford*, op. cit. 314.

for members of minority groups. English-Only legislation may appear to meet this standard. However, the intent requirement is becoming an increasingly difficult requirement to satisfy.[23]

CONCLUSION

Threats to free speech often come disguised in emotional terms. Advocates of the proposed constitutional amendment to ban flag burning appealed to patriotism, and proponents of the English-Only laws also cloak their appeal in patriotic rhetoric. Both the flag burning amendment and the English-Only laws would result in very real losses in expressive freedom. Many members of Congress have testified that they use the languages of their constituents to communicate with them. From Russian in New York to Navajo in Arizona, members agreed that use of a constituent's native language was effective in including the constituents in the electoral process. Further, petitions to members of Congress from the constituents often come in non-English languages. Ultimately, the language laws would restrict the right to receive information in a language other than English. This is clearest in voting, where the English-Only movement has vowed to end all bilingual assistance to voters. Eventually, the movement would seek to abolish the use of languages other than English in the private sphere as well. The movement has sought the revocation of the licenses of Spanish language radio stations, and has objected to advertising which uses the Spanish language.

The English-Only movement's rhetorical focus on the laudable goals of national unity and English proficiency has brought considerable financial and political success. But in reality the movement is driven by cultural insecurity and prejudice against minorities. Its leadership appears to be frightened by Hispanic and Asian immigration and the possible loss of political dominance. In fact, English-Only laws fail to advance English proficiency or to foster national unity. Instead, their only accomplishments are invidious: promoting harmful divisiveness while infringing on important minority rights. Because these laws tend to deprive minorities of their rights to education, to equal access to the ballot box, and to non-discriminatory work environments, they might not survive constitutional challenge. However, given the trend of many recent Supreme Court decisions affecting civil liberties, this outcome is far from certain.

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* * *

[23] A strong argument can be made that English-Only laws would meet the intent standard, since they are being proposed and adopted because of, not in spite of, the adverse consequences to language minority groups.

However, as an example of the difficulty of meeting the intent standard, the Supreme Court has recently held that exclusion of only Spanish speaking jurors is acceptable if the prosecuting attorney states that his intent was not to discriminate, *Hernandez v. New York*, 114 L.Ed. 2d 395 (1991).

This newsletter is a publication of the Fund for Free Expression, which was created in 1975 to monitor and combat censorship around the world and in the United States. It was researched and written by Antonio J. Califa, Legislative Counsel for the American Civil Liberties Union.

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